United Nations CCPR/C/120/D/2941/2017

International Covenant on Civil and Political Rights

Distr.: General
30 August 2017

Original: English

Human Rights Committee

Decision adopted by the Committee under the Optional Protocol, concerning communication No. 2941/2017*, **

Communication submitted by:	Z.Z. (not represented by counsel)
Alleged victim:	The author
State party:	Australia
Date of communication:	8 January 2017 (initial submission)
Date of adoption of decision:	21 July 2017
Subject matter:	Fair trial
Procedural issues:	Substantiation of claims; abuse of time
Substantive issues:	Right to a fair trial
Articles of the Covenant:	2, 3, 5, 7, 9 (1), (3) and (5), 14 (1), (2) and (3), 16, 17 (1), 19 and 26
Articles of the Optional Protocol:	2 and 5 (2) (b)

1.1 The author of the communication is Z.Z., a national of Australia born in 1956 in Beijing. He claims that the State party has violated his rights under articles 2, 3, 5, 7, 9 (1), (3) and (5), 14 (1), (2) and (3), 16, 17 (1), 19 and 26 of the Covenant. The Optional Protocol entered into force for the State party on 25 December 1991. The author is not represented.

1.2 On 27 January 2017, the Committee, acting through its Special Rapporteur on new communications and interim measures, decided not to issue a request for interim measures under rule 92 of the Committee's rules of procedure, and determined that no observations from the State party were needed to ascertain the admissibility of the present communication.

* Adopted by the Committee at its 120th session (3-28 July 2017).

** The following members of the Committee participated in the examination of the communication: Tania Maria Abdo Rocholl, Yadh Ben Achour, Ilze Brands Kehris, Sarah Cleveland, Ahmed Amin Fathalla, Olivier de Frouville, Christof Heyns, Yuji Iwasawa, Ramartan Koita, Duncan Laki Muhumuza, Photini Pazartzis, Mauro Politi, José Manuel Santos Pais and Margo Waterval.

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The facts as submitted by the author

2.1 The author explains that on 14 June 1997, Victoria Police refused him equal protection of law from domestic violence when he complained that R.M.H., his ex-wife, had abused him and assaulted him.

2.2 The author submits that on 23 March 2000, he was contacted by M., who was selling his "contract killing services". According to the author, the police had conspired with an informer named P. to constantly harass, intimidate and compel the author, with death threats, duress and fraud, to hire M. to kill his ex-wife. The author also submits that P. and the police had the same purpose of "political persecution" for inducing him into hiring M. to kill his ex-wife. The author explains that the police distorted unsubstantiated, inadmissible and fraudulent evidence to jail him.

2.3 The author advises that on 22 August 2000, the police arrested and charged him for the alleged offence of incitement to murder. He claimed that his arrest violated articles 14 (3) (b) and 9 (1) of the Covenant. He also claims that the police concealed exculpatory evidence by curtailing its inconclusive investigation to arbitrarily arrest him.

2.4 The author explains that during the trial proceedings in 2000 and 2001, where he was accused of incitement to murder, various unlawful incidents occurred that violated his rights. In that connection, he alleges that: (a) the printed legal documents he had submitted to his lawyer were stolen twice; (b) all his legal documents in electronic format were also stolen; (c) his telephone conversations with his lawyers were unlawfully and constantly monitored and intercepted; (d) the police fabricated false statements; (e) Victorian Legal Aid forced him to accept the assigned lawyers to represent him before the courts, and those lawyers refused to take his legitimate instructions on the conduct of his court proceedings; and (f) the trial judge denied him procedural rights to save the court time and to cover up the police's unlawful conduct of corruption within their investigation, and unnecessarily discharged the whole first jury selection to create a gender-biased and unbalanced jury.

2.5 The author submits that the trial judge refused to give him the opportunity to contest the police evidence and did not give him the reasons why he had refused to stay the proceedings before the jury was selected and delivered its verdict. He adds that the trial judge "fraudulently misdirected the jury on the application of the law to relieve the prosecution of more than 80 per cent of the burden of proof for the prosecution".

2.6 The author explains that from 1 November 2001 to 15 May 2003, the Court of Appeal of the Supreme Court of Victoria unlawfully violated his rights under article 14 (5) of the Covenant by endorsing the trial judge's decision and denied his rights to access to justice. He claims that the Court of Appeal pervasively applied dual standards to protect the reputation of the trial judge rather than to protect the fundamental principles of the rule of law and the presumption of innocence. He also claims that Victoria Legal Aid deprived him of a chance to represent himself in court and to dismiss the inappropriate lawyers he was assigned in the appeal proceedings.

2.7 The author submits that on 11 February 2005, the High Court of Australia reiterated similar violations of the same articles of the Covenant denying his right to access to justice. He claims that the hearing for his application for special leave to appeal was unfair and arbitrary. In this connection, the author indicates that: (a) the High Court did not comply with the constitutional right regarding the quorum, which stipulates that there must be no less than three High Court judges at the hearing; (b) one of the two judges at the hearing was Justice H., who had previously precluded the author in his bail application and should have disqualified himself by reason of issues concerning the impartiality of the High Court; and (c) the High Court cut five minutes of the author's debating time to prevent him from presenting all his arguments. The author therefore claims that the negative decision of the High Court in his case was flawed, defective and unlawful, and that the High Court discriminated against him and denied him natural justice in violation of article 14 (1) of the Covenant.

2.8 The author explains that after the Government of Victoria had withheld his application for more than two years, on 29 May 2012 the Governor of Victoria advised him that his petition for mercy to appeal his conviction was refused, without any reason.

2.9 The author also submits that on 8 June 2012, the DNA department of the police informed him that they were planning to use their physical and violent force to enforce an "unlawful court order for taking the DNA sample from" him. The author requested the Committee to protect him from irreversible brutal physical harming or killing, which the police, on behalf of the State party, had threatened to use to carry out a false and fraudulent DNA court order in violation of article 7 of the Covenant.

2.10 The author also makes reference to his intention, in 2009, to obtain employment as a commercial vehicle driver. He submits that, with that purpose, he applied on 7 and 27 January 2009 for an Assessment Notice under the Working with Children Act, and for a Driver Accreditation to drive commercial passenger vehicles under the Transport Act. On 14 December 2010, the Victorian Civil and Administrative Tribunal denied him such employment. The author then lodged an application to the Supreme Court of Victoria for a remedy to appeal the decisions of the Victorian Civil and Administrative Tribunal. On 22 May 2013, the Supreme Court upheld the author's appeal to set aside the decision of the Tribunal and remitted the case for a fresh hearing by a different judge. The author explains that on 14 April 2016, the Tribunal registered his submission and ordered the Department of Justice and the Taxi Services Commission to provide him with the Working with Children Assessment Notice, and Driver Accreditation. However, the Department of Justice and the Taxi Services Commission refused to comply with the order and applied to the Court of Appeal of the Supreme Court of Victoria for leave to appeal the decision. On 17 February 2017, the Court of Appeal dismissed the application for leave and upheld the decision of the Tribunal.

The complaint

3.1 The author claims that the police refused to provide him with protection from the domestic violence of his ex-wife, and that this amounts to a violation of his rights under articles 3, 5, 16 and 26 of the Covenant.

3.2 He also claims a violation of his rights under articles 3, 5, 9 (1), (3) and (5), 14 (1), (2) and (3) (b), (d), (e) and (g), 16 and 26 of the Covenant since the police conspired against him and falsely accused him of trying to kill his ex-wife; they abused their power by concealing exculpatory evidence and arbitrarily arrested him. The author also submits that the State party denied him bail as the police wanted to spy on his legal communications to find more issues that they needed to cover up, and that the courts of the State party denied him "natural and procedural justice".

3.3 The author also claims a violation of his rights under articles 7, 17 and 19 of the Covenant, since the State party has unlawfully punished him by not allowing him to work as a bus driver for seven years, thereby discriminating against him. He adds that this unlawful punishment, including for having expressed his opinions on the political and justice system, has caused him mental suffering and a huge financial loss and has negatively impacted his private life. He considers that the State party has to be held responsible for his financial loss.

3.4 The author maintains that the State party has also violated his rights under articles 2 and 14 (5) of the Covenant, since his petition for mercy to appeal his conviction was refused by the Governor of Victoria without any reason.

3.5 Finally, the author claims that the police threat to use physical force against him to carry out a false and fraudulent DNA court order would, if implemented, violate article 7 of the Covenant.

Issues and proceedings before the Committee

Consideration of admissibility

4.1 Before considering any claim contained in a communication, the Committee must decide, in accordance with rule 93 of its rules of procedure, whether the communication is admissible under the Optional Protocol.

4.2 The Committee has ascertained, as required under article 5 (2) (a) of the Optional Protocol, that the same matter is not being examined under another procedure of international investigation or settlement.

4.3 The Committee considers that the author's claims under articles 2, 3, 5, 9 (1) and (3), 14 (1), (2), (3) (b), (d), (e) and (g) and (5), 16 and 26 of the Covenant relate in substance to the evaluation of facts and evidence in the course of proceedings before the State party's courts. The Committee recalls that "it is generally for the courts of States parties to the Covenant to review facts and evidence, or the application of domestic legislation, in a particular case, unless it can be shown that such evaluation or application was clearly arbitrary or amounted to a manifest error or denial of justice, or that the court otherwise violated its obligation of independence and impartiality".[1] The Committee observes that the author has failed to provide any evidence to demonstrate that the conduct of the judicial proceedings in his case suffered from such deficiencies. Accordingly, the Committee considers that the author's claims under articles 2, 3, 5, 9 (1) and (3), 14 (1), (2), (3) (b), (d), (e) and (g) and (5), 16 and 26 are inadmissible under article 2 of the Optional Protocol.

4.4 The Committee notes the author's claims that his rights under articles 3, 5, 16 and 26 have been violated since the police refused to provide him with protection from the domestic violence allegedly carried out by his ex-wife. However, the Committee considers that the author failed to sufficiently substantiate his claims in that regard for the purpose of admissibility. Accordingly, it declares the author's claims under articles 3, 5, 16 and 26 inadmissible pursuant to article 2 of the Optional Protocol.

4.5 Regarding the author's claims under articles 7, 17 and 19 of the Covenant, the Committee notes the author's submission that the fact that he did not get the Working with Children Assessment Notice and Driver Accreditation for seven years has caused him mental suffering and a huge financial loss. The Committee also notes the author's claim that the police threat to use physical force against him to carry out a false and fraudulent DNA court order would, if implemented, violate article 7 of the Covenant. Nevertheless, the Committee notes that the author has failed to demonstrate that he has exhausted all available domestic remedies with regard to these allegations. The Committee therefore concludes that the author's claims under articles 7, 17 and 19 of the Covenant are inadmissible under article 5 (2) (b) of the Optional Protocol.

5. The Committee therefore decides:

(a) That the communication is inadmissible under articles 2 and 5 (2) (b) of the Optional Protocol;

(b) That the present decision shall be transmitted to the State party and to the author.

[1] See the Committee's general comment No. 32 (2007) on the right to equality before courts and tribunals and to a fair trial.